No. 88-2102

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1989

JAMES STEWART, PATRICIA HITCHCOCK O'CONNELL and SAMUEL TAYLOR both as co-trustees of the Second-Residuary Trust of the Last Will of ALFRED HITCHCOCK, MCA INC., and UNIVERSAL FILM EXCHANGES, INC.

Petitioners,

vs.

SHELDON ABEND, dba AUTHORS RESEARCH COMPANY,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

JOINT APPENDIX

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Petition For Certiorari Filed June 23, 1989
Certiorari Granted October 2, 1989

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA NO. 84-2489 AAH

SHELDON ABEND, d/b/a AUTHORS RESEARCH COMPANY, plaintiff, v. MCA, INC., a corporation, UNIVERSAL FILM EXCHANGE, INC., a corporation, JAMES STEWART and PATRICIA HITCHCOCK O'CONNELL and SAMUEL TAYLOR, both as Executors of the Estate of Alfred Hitchcock and as Trustees of the Assets of the Estate of Alfred Hitchcock, defendants.

DATE	NR	PROCEEDINGS
4/10/84	1.	Cmplt w/Demand for Jury Trial. Issd Sms. Case may be ref to Mag. Reichmann for disc.
6/21/84	6.	Answer by Deft Patricia Hitchcock O'Connell & Samuel Taylor, Trustee to complt & Demand fr J/T.
	7.	Answer by Deft MCA INC and UNIVERSAL FILM EXCHANGE INC Demand fr J/T.
7/10/84	11.	Answer by Defendant James Stewart to Complaint & Demand for J/T Defts Same as above.
10/31/86	64.	Notc of motn & motn by defts for S/J re *Rohauer* issue, retbl 12/15/86, 10AM. defts LODGED Prop statement of uncontroverted facts & conclusions of law. LODGED Ord.
	65.	Notc of motn & motn by defts for S/J re defects in rear window story copyright, retbl 12/15/86, 10AM. All defts. LODGED Prop stmt of uncontroverted

facts and conclusions of law. LODGED Prop. S/J.

67. Notc of motn & motn for ord granting S/J on the issue of defts' liability; memo of P's & A's in supprt, retbl 12/15/86, 10AM. Pltf Sheldon Abend, doing business as Authors Research Co.

68. Memo of P's & A's in supprt of defts' motn for S/J re defects in rear window story copyright. Defts.

10/31/86 69. Declar of Gene Giaquinto in supprt of defts' motns for S/J. Defts.

70. Declar of Joseph V. DiMuro in supprt of defts' motn for S/J. Defts.

71. Declar of Harry Tatelman in supprt of defts' motns for S/J. defts.

72. Declar of James Stewart in supprt of defts' motn for S/J. Defts.

73. Declar of Joseph S. Dubin in supprt of defts' motns for S/J. Defts.

74. Declar of Samuel Taylor in supprt of defts' motns for S/J. Defts.

75. Declar of Herman Citron in supprt of defts' motns for S/J. Defts.

76. Declar of Louis P. Petrich in supprt of defts' motns for S/J. Defts.

77. Memo of P's and A's in supprt of defts' motn for S/J re *Rohauer* ruling. Defts

78. Declar of Sheldon Abend in supprt of his motn for ord granting S/J on the issue of defts' liability. Pltf.

79. Declar of Peter J. Anderson in supprt of pltf's motn for ord granting S/J on the issue of defts' liability. Pltf.

10/31/86 83. Declar of William Soady in supprt of Defts' motns for S/J. Defts.

11/3/86 130. Exhibit 1079 videocassette of "Rear Window" motn picture. Defts.

11/3/86 80. Exhibit 1080 book entitled "Rear window & four short novels". Defts.

81. Exhibit 1079 videocassette of "Rear Window" motn picture. Defts.

82. Exhibit in supprt of defts' motn for S/J. Defts.

11/18/86 87. Amended exhibits in supprt of defts' motn for S/J. Defts.

11/24/86 88. Second declartn of Louis P. Petrich re pltfs & defts mtns fr S/J. Defts.

89. Declratn of A. Fredric Leopold in sppt. dfts.

90. Second Declratn of Herman Citron in sppt. dfts.

92. Supplmnt to defts' exhs re S/J. Mnts

93. Declratn of Thomas C. Thayer in suppt. dfts.

94. Memo of P/A & declratns in opp. Pltf.

95. Memo of P/A & declratn in opp to dfts mtn fr S/J. Pltf.

11/24/86 96. Statmt of Genuine Iss and Material Facts.

12/1/86 97. Objections to & Motn to Strike defts' new "Motn for S/J re fair use doctrine." Pltf.

12/4/86 98. Notc of motn & motn by defts for S/J on the fair use defense, flg granted, retbl 3/23/87, 10AM. Defts.

101. Memo of P/A in opp to pltf's motn for S/J on the issue of liability, & in supprt of defts' cross-motn on the fair use defense. Defts.

12/9/86 102. On the Court's own motion, for the benefit of the parties and attorneys, and upon good cause shown,

It is ordered as follows: 1) defendants' notice of motion and motion for summary judgment on the fair use doctrine shall be filed forthwith; 2) plaintiff's objections to defendants' motion for summary judgment on the fair use doctrine are overruled, and plaintiff's motion to strike is denied; 3) hearing date on all motions for summary judgment (one by plaintiff and three by defendants) is herewith continued from December 15, 1986 to March 23, 1987 at 10:00 a.m.; 4) pre-trial is herewith continued from March 16, 1987 to April 20, 1987 at 10:00 a.m.; 5) jury trial date remains set for May 5, 1987 at 9:30 a.m.; 6) briefing dates on plaintiff's one motion for summary judgment and defendants' first two motions for summary judgment (1) issue of defects in Rear Window story copyright; 2) issue of *Rohauer* decision and rationale) shall remain as presently set and briefs have already been filed therein on October 31, 1986; 7) briefs in support of and opposition to defendants' third motion for summary judgment (issue of fair use doctrine) shall be filed on or before: a) plaintiff's brief in opposition to defendants' motion for summary judgment shall be filed on or before 1-5-87; defendants' response shall be filed on or

before 2-5-87; plaintiff's reply shall be filed on or before 2-16-87.

1/30/87 104. Declarn of Leland Faust in supprt of defts' motn for S/J re Rohauer ruling. Defts. (Filed Under Seal).

105. Declarn of Salvatore Dinolfo in supprt of defts' motns for S/J. Defts. (Filed Under Seal).

106. Reply to pltf's opp to defts' motn for S/J re Rohauer ruling. Defts. (Filed Under Seal).

1/30/87 107. Memo of P's & A's in opp to defts' motn for S/J re "Fair Use' defense. Pltf.

108. Memo of P/A & declarns in reply to defts' opp to motn for S/J on the issue of defts' liability. Pltf.

109. Declr of Lew R. Wasserman. Defts.

110. Third declarn of Herman Citron in supprt of defts' motns for S/J. Defts.

111. Declarn of Paul Killiam in supprt of defts' motns for S/J in opp to pltf's motn for S/J. Defts.

112. Third declarn of Louis P. Petrich in supprt of defts' motns for S/J in opp to pltf's motn for S/J. Defts.

113. Third book of exhibits in supprt of defts' motns. Defts.

115. Reply to pltf's opp to defts' motn for S/J re defects in rear window story copyright. Defts.

2/17/87 116. Objections by defts to certain evidence offered by pltf on pending motns for S/J. Defts.

2/17/87 117. Reply to pltf's opp to defts' cross-motn for S/J re fair use defense. Defts. (Filed Under Seal).

118. Fourth declarn of Louis P. Petrich. Defts. (Filed Under Seal).

3/16/87 121. Suppl declar of Sheldon Abend. Pltf.

3/24/87 122. Declar accompanying pltf's complete set of exhibits re pending motns. Pltf.

3/23/87 123. Defts' motn for S/J granted on Fair Use Defense & Rohauer issue. Pltf's motn for S/J on liability is denied. MO. (V.M.).

3/23/87 124. S/J (Rohauer) ORD tht pltf take nothing by his complt agnst MCA Inc., Universal Film Exchanges, Inc., James Stewart, & Patricia Hitchcock O'Connell & Samuel Taylor, as co-trustees of the Second (Residuary) Trust under the last Will of Alfred J. Hitchcock, or any of them, and tht the actn is dismissed on the merits in its entirety; defts MCA Inc., Universal Film Exchanges, Inc., James Stewart, & Patricia Hitchcock O'Connell and Samuel Taylor, as co-trustees of the 2nd (Residuary) Trust under the last Will of Alfred J. Hitchcock, shall recover their costs of actn agnst pltf Sheldon Abend in the sum of $ ___. (ENT 3/27/87) Mld N/E stampd cpy ptys.

3/23/87 125. S/J re fair use defense, & ORD tht pltf take nothing his complt agnst MCA Inc., Universal Film Exchanges, Inc., James Stewart, & Patricia Hitchcock O'Connell & Samuel Taylor, as co-trustees of the 2nd (Residuary) Trust under the last Will of Alfred J. Hitchcock, or any of them, & tht the actn is dismissed on the

merits in its entirety; defts MCA Inc., Universal Film Exchanges, Inc., James Stewart, & Patricia Hitchcock O'Connell & Samuel Taylor, as co-trustees of the 2nd (Residuary) Trust under the last Will of Alfred J. Hitchcock, shall recover their costs of actn agnst pltf Sheldon Abend in the sum of $ ___. (ENT 3/27/87) Mld N/E stampd cpy ptys.

4/ 1/87 128. Pltf fld notc of appl to 9th CCA frm sumry jdgmnt entrd. 3/27/87 & frm ord. for smry jdgmnt entrd. 3/23/87. $70.00 fing & doc fee pd.

1/30/87 129. Fld frm Paul Smith re "Rear Window" advertisements (offered in connection with pltf's reply on his motn for S/J re defts' liability, 1/30/87).

4/14/87 131. Defnd. (s) MCA, Et al., Fld Notc of Cross Appl to 9th CCA Frm Smry Jdgmnt Lodged on 3/24/87. Fees Paid.

4/15/87 133. Ord tht the motn of defts S/J on the ruling is hereby granted; the motn of defts S/J based on the fair use defense is hereby granted; the motn of defts for S/J based on defects in the cpyright of the REAR WINDOW story is hereby denied. (ENT 4/20/87) Mld N/E stampd cpy ptys.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT Nos. 87-5780, 87-5833 and 88-5922

SHELDON ABEND, d/b/a AUTHORS RESEARCH COMPANY, Plaintiff, Appellant and Cross-Appellee v. MCA, INC., a corporation, UNIVERSAL FILM EXCHANGE, INC., a corporation, JAMES STEWART AND PATRICIA HITCHCOCK O'CONNELL AND SAMUEL TAYLOR, both as Executors of the Estate of

Alfred Hitchcock and as Trustees of the Assets of the Estate of Alfred Hitchcock, Defendants, Appellees and Cross-Appellants.

DATE*	PROCEEDINGS
12/4/87	Brief of Appellant Sheldon Abend
1/27/88	Brief of Appellees and Cross-Appellants
1/27/88	Brief Amicus Curiae submitted by Columbia Pictures Industries, Inc., DeLaurentiis Entertainment Group, Inc., MGM/UA Communications Co., Orion Pictures Corporation, Paramount Pictures Corporation, Twentieth Century Fox Film Corporation, The Walt Disney Company and Warner Bros. Inc.
1/26/88	Brief of Turner Entertainment Co. as Amicus Curiae
4/1/88	Reply Brief of Appellant and Cross-Appellee Sheldon Abend
4/18/88	Reply Brief of Appellees and Cross-Appellants
6/29/88	Order directing parties to file simultaneous supplemental briefs regarding injunctive relief.
7/13/88	Supplemental Brief of Appellant and Cross-Appellee Sheldon Abend
7/15/88	Supplemental Brief of Appellees and Cross-Appellants

*Because of the recent San Francisco earthquake, counsel have not been able to obtain a copy of the docket from the Court of Appeals. The dates given above are approximate.

8/8/88	Letter dated August 8, 1989 submitted by Appellees and Cross-Appellants re *Cohen v. Paramount Pictures Corp.*, 845 F.2d 851 (9th Cir. 1988)
9/7/88	Order granting Motion to File Letter re *Cohen v. Paramount Pictures Corp.*
9/23/88	Plaintiff's Response to Defendants' Letter regarding *Cohen v. Paramount Pictures Corp.*
12/27/88	Opinion of the court of appeals
1/10/89	Petition for Rehearing and Suggestion for Rehearing En Banc by Appellees and Cross-Appellants
1/10/89	Brief Amicus Curiae submitted by Columbia Pictures Industries, Inc. etc. in support of Petition for Rehearing and Suggestion for Rehearing En Banc
4/13/89	Order denying Petition for Rehearing and Rejecting Suggestion for Rehearing En Banc

[EXHIBIT 1016]

AGREEMENT made this 29th day of October, 1971, by and between THE CHASE MANHATTAN BANK, N.A., as Executor of the Estate of Cornell Woolrich, of One Chase Manhattan Plaza, in the City, County and State of New York (hereinafter referred to as "ASSIGNOR"), and AUTHORS RESEARCH COMPANY, having its principal place of business at 52 Vanderbilt Avenue, in the City, County and State of New York (hereinafter referred to as "ASSIGNEE").

In consideration of the covenants and conditions herein contained and other good and valuable considerations, IT IS HEREBY AGREED AS FOLLOWS:

1. Cornell Woolrich, sometimes also known under the pseudonym of William Irish (hereinafter referred to as the "Author") wrote certain dramatic writings and material which first were published in the United States of America in February, 1942 in "Dime Magazine", Volume 38 - Issue No. 3 under the title IT HAD TO BE MURDER, and copyrighted as part of that magazine in the name of Popular Publications, Inc., on behalf of the Author, under Entry No. B-528177 on January 2, 1942 (hereinafter referred to as the "Property"),

(a) On April 6, 1943, Popular Publications, Inc. assigned all of its right, title and interest in and to the story IT HAD TO BE MURDER to Cornell Woolrich. The aforesaid assignment was duly recorded in the Assignment Volume of the Copyright Office in Volume 648, page 181, on November 13, 1947;

(b) The Property, under the title REAR WINDOW, together with five (5) other separate stories written by the Author, subsequently was published by J.P. Lippincott Company in association with Story Magazine, Inc., in the United States of America in a book entitled AFTER DINNER STORY. Said book was copyrighted in the name of the Author using his pseudonym of William Irish on the date of October 4, 1944 under Entry No. A2-188507;

(c) The Author, by written agreement dated May 16, 1945, sold, assigned and transferred to B.G. De Sylva Productions, Inc., all the motion picture and certain other rights in and to the Property, upon the terms and conditions set forth in such agreement. Such agreement is hereinafter referred to as the "Basic Agreement". A copy of the Basic Agreement is attached hereto marked Exhibit "A" and hereby made a part hereof;

(d) On September 25, 1968 the Author died while a resident of the City, County and State of New York, leaving a will which was duly submitted for probate in New York County on January 16, 1969. The Chase Manhattan Bank, N.A. was named as Executor under such will and on January 16, 1969 Testamentary Letters were issued to it and duly recorded in New York County;

(e) The Chase Manhattan Bank, N.A., as Executor of the Estate of Cornell Woolrich, renewed the United States copyright in and to the Property on December 29, 1969 under Entry No. R-475565. By such renewal, ASSIGNOR became invested with all rights in, to and under the Property under the United States renewal copyright thereof, thereafter vested in the Chase Manhattan Bank, N.A., notwithstanding the terms of the Basic Agreement,

by virtue of the death of the Author during the original term of the United States copyright of the Property;

(f) By reason of all of the foregoing, ASSIGNOR has the full right, power and authority to make the grant provided for herein and fully to perform this agreement in all respects.

2. ASSIGNOR hereby grants, sells, assigns, confirms and sets over to the ASSIGNEE for the period commencing on January 3, 1970 and continuing thereafter throughout the renewal period and any and all enlargements or extensions thereof enacted at any time hereafter of the United States renewal copyright in the Property and all versions thereof, each and all of the same licenses, privileges, property and interests in and with respect to the Property as were originally granted to B.G. De Sylva Productions, Inc. or its assignees under and pursuant to the Basic Agreement insofar as such rights, licenses and privileges pertain to and derive under the renewed copyright of the Property, and ASSIGNOR does hereby further confirm and agree that ASSIGNEE hereby has acquired and shall own, possess and be vested with each and all of such rights, licenses and privileges exclusively and with the same force and effect as if each and all were fully and at length set forth herein. Without limiting the generality of the foregoing, such rights shall include the right to televise the Property and any and all Photoplays based thereon, in whole or in part and in any and all forms, the right to any and all claims, causes or choses in action arising out of or existing or which hereafter may arise out of or exist by reason of any unauthorized use of the Property or any version or part thereof, during the renewed period of the copyright of the Property.

3. ASSIGNOR will cause further renewals and extensions of the United States copyright to the Property and all component parts thereof duly to be obtained when required or desirable. If the present copyright law of the United States of America shall be amended, changed or a substitute copyright law is enacted so that the term of the copyright is extended or enlarged, ASSIGNOR agrees that ASSIGNEE forthwith and automatically shall become entitled to all the rights hereby conveyed, granted and assigned to ASSIGNEE for such extended or enlarged term.

4. ASSIGNOR hereby appoints ASSIGNEE, its successors and assigns its irrevocable attorney-in-fact, with the right, but not the obligation, to execute, deliver and file, on behalf of ASSIGNOR and in the name of ASSIGNOR, or otherwise, all documents and to do all acts necessary for the obtaining of such extension or renewal and confirming and assigning to ASSIGNEE [of] the rights herein granted ASSIGNEE for such renewed or extended periods of copyright.

5. ASSIGNOR will execute and deliver to ASSIGNEE all further documents reasonably required by ASSIGNEE from ASSIGNOR to vest in ASSIGNEE, to perfect in ASSIGNEE the rights, titles, privileges and interests hereby conveyed or intended to be conveyed to ASSIGNEE.

6. ASSIGNOR agrees that it has not entered into any agreement, given any consent, or made any grant or other disposition to any person, firm or corporation of any right, title or interest in or under the renewed copyright of the Property inconsistent with or contrary to any of the

rights, licenses, privileges and/or interests herein granted or agreed to be granted to ASSIGNEE, and that the rights granted ASSIGNEE hereunder are free and clear of any lien, claim, charge or encumbrance.

7. In full consideration of the grants and transfers made by ASSIGNOR hereunder, ASSIGNEE hereby agrees to pay ASSIGNOR the sum of one ($1.00) dollar and other good and valuable consideration upon the execution thereof. Payment when so made shall constitute payment in full for all rights and transfers herein to ASSIGNEE.

8. This agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed as of the day and year first above written.

THE CHASE MANHATTAN BANK, N.A., as Executor of the Estate of Cornell Woolrich

By:/s/
Second Vice President
Assignor

AUTHORS RESEARCH COMPANY

By:/s/
Sheldon Abend
Assignee

[Notary Page Omitted]

EXHIBIT 1017, PAGE 1 of 1

Authors Research Company

Representing American and Foreign Literary Properties

52 VANDERBILT AVENUE – NEW YORK. N. Y. 10017 – MURRAY HILL 6-6333-4

SHELDON ABEND
Executive Director

October 29, 1971

SUPPLEMENTARY LETTER AGREEMENT

The Chase Manhattan Bank, N.A.,
as Agent for the Estate
Of Cornell Woolrich.
One Chase Manhattan Plaza
New York, New York

Re: IT HAD TO BE MURDER

Gentlemen:

I have reference to the Agreement between us of even date herewith relating to the above-captioned subject matter.

Wherein it recites that you are to receive One ($1.00) Dollar and other good and valuable consideration in such Agreement, it is our understanding that the other good and valuable consideration is the payment to you of the sum of Six Hundred Fifty ($650.00) Dollars and, additionally ten (10%) percent of the gross revenues that the undersigned receives as its share of any and all monies from the exploitation of the remake rights of the above-captioned literary work in any and all media shall be paid to you.

This was not recited in the basic Agreement, which is for recording purposes.

Accordingly, you are to be and will be paid the additional sum of Six Hundred Fifty ($650.00) Dollars upon the execution by the undersigned of such Agreement as hereinabove referred to.

Very truly yours,

AUTHORS RESEARCH COMPANY

/s/ Sheldon Abend,
Sheldon Abend,
Executive Director

EXCERPTS FROM DEPOSITIONS

Deposition of Alfred Hitchcock

[35] Q. [By Mr. Stream] Would you be good enough to turn the pages and glance as you did in the Answers to Interrogatories and tell me whether or not you recognize that as the story which Lou Wasserman showed you at the time; not perhaps in that particular issue but as the same story.

A. I wouldn't know.

Q. You wouldn't deny the possibility?

A. Possibility.

Q. Did you look at it just now, Mr. Hitchcock?

A. Yes, but I looked at it like I would any other story I'm going to make into a picture. That is to say, I read it once, and I throw it away, because I make a picture. I do not make a book into a picture. There's a big difference here.

[36] Q. Yes. We will get to that later.

A. That's why they're called Hitchcock films and not Woolrich films.

Q. I see.

* * *

[37] Q. [By Mr. Stream] Now, what did you do with this story, whatever the form took, which Lou Wasserman gave to you and that you glanced over or read?

A. I read it. I engaged a writer.

Q. Immediately after reading it?

A. Just read it.

Q. Did you call up Mr. Wasserman or visit with him [38] or discuss –

A. Yes. I said, "Yes, okay. I'll go ahead."

Q. Then you called up a writer, you say?

A. Yes. I engaged a writer.

Q. Do you remember his name?

A. John Michael Hayes, and the writing was done in my office with his typewriter in my office, and there are many witnesses if you need that.

In other words, I dicate [sic] the picture. I do not hand that book to the writer and say, "Make a screen play of this," which is a custom of the business, but it doesn't apply to me because I make a special type of film, and I dictate to him what I want to go into the story, and just as a matter of interest, the reason that is done is because I want it done in my way, in my style, and I would say in that process there is 20 percent Cornell Woolrich and 80 percent Hitchcock.

If you wish me to cite examples, I will be delighted to do so.

Q. Did you dictate this story to a stenographer?

A. No. To the man sitting there at his typewriter.

Q. You mean to John Michael Hayes?

A. To John Michael Hayes, certainly.

Q. The man who in Plaintiff's Exhibit 3 for identification – which is the main title billing for REAR WINDOW – is listed as the author of the screenplay?

A. That is right.

Q. You say you dictated that to him?

[39] A. I am actually a writer-producer and director, but I never take credit for it.

* * *

Q. [By Mr. Stream] You say you dictated that to him?

A. Yes, but I must tell you that there is a certain meaning to the word "dictated."

Q. You tell me how you dictated the story.

A. It is not like dictating to a stenographer.

Q. That is what I want to find out. Tell me how you dictated –

A. Talk it over –

Q. Let me finish the question, please.
– the story you read to John Michael Hayes.

A. Yes.

Q. Tell me how you did that.

A. We talked over certain things. I said, "There's [40] no woman in this story. We've got to put a woman in."

Q. Did you have the story in front of you while you talked about –

A. No, of course not. Threw it away.

Q. Threw it away?

A. Yes.

Q. Didn't give it back to Mr. Wasserman; threw it away?

A. Didn't bother. I'm going to make a picture out of it, out of the basic idea.

Q. I see.

Continue to relate what you started to relate.

A. Well, we added a woman to the innumerable characters in the various rooms, all created, none of which was in the book. We engaged a woman masseur played by Thelma Ritter. She was an additional character. I made the leading man a photographer.

Q. What was he in the story; do you recall?

A. I haven't the faintest – can't remember.

Q. When did you read the story the last time, Mr. Hitchcock?

A. Oh, I would say about 1952.

Q. That was on the occasion when Mr. Wasserman sent it to you?

A. Right.

Q. Since that date to this very day, you have never read it again; is that a fact?

A. [No audible response.]

---

[41] Q. Is that a fact?

A. Absolutely.

Q. Have you completed your answer to the question, or did I interrupt you?

You told us about Thelma Ritter, I believe.

A. Yes. Well, et cetera, et cetera and et cetera; meaning there were innumerable things put into the picture which were not in the short story.

Q. Well, give us some more examples. I would like to have these et ceteras on the record.

A. Well, there's – we had a musician. We had a couple with a dog. A heavy in the story killed the dog – murder, in other words, and I also included the essence of two famous English cases.

One was the case of Dr. Crippen, the first man ever to be arrested by radio at sea. He was uncovered because he gave his wife's jewelry to his secretary, and that was his uncovering. A wife doesn't go away and leave her jewelry behind. That was inserted into the story.

* * *

Deposition of Bridget Potter

* * *

[21] Q. I think you've already identified Leonard Gershe. He apparently did at least one script for the HBO production of "Rear Window"?

A. Yes.

Q. Did you read that?

A. Yes, I did.

* * *

Q. Did you ever have any occasion to compare Mr. Gershe's version of "Rear Window" with the –I'll [22] call it the Alfred Hitchcock movie version?

A. Yes, I did.

Q. Did you come to any conclusions as to whether there were any differences between the two?

A. I came to the conclusion that the film was infinitely superior to the script.

Q. Why was that? What was your basis for that?

A. Well, it's a classic film, and this was a fairly pedestrian script, and that's the – it was a subjective judgment, but that's what I'm paid for.

Q. Did you notice any difference in terms of the major roles in the two works?

A. I don't recall. I really do not recall.

Q. Do you recall whether there were any attempts to cast the HBO version of "Rear Window"?

A. There were many attempts to cast the HBO version of "Rear Window."

Q. Do you recall any attempt to cast Katharine Hepburn as the leading –

A. I don't specifically recall. It would seem logical since the Landaus had a relationship there that there might have been a conversation about that, as there were with them about her and a number [23] of projects.

Q. Do you recall any reactions you got in attempting to cast the role?

A. We did not cast Katharine Hepburn in the role.

Q. How about any of the other attempts to cast?

A. We failed to cast the piece in a manner satisfactory to Home Box Office.

Q. Do you know any reason for that? Were you given any reasons?

A. Frequently the producers who were helping us with this, the Landaus, said to me that people were concerned about being in something that had been so successful in another version that they wouldn't want to be compared to the original performers and so on on. That's conjecture. However, this was discussed.

Also the script wasn't very good. We knew that.

* * *

[40] Q. Did there come a time in particular when HBO made a specific decision not to produce it or not to have it produced, or did it just sort of –

A. It just sort of fizzled. Our rights, I think, expired and along with them our interest in seeing it done.

Q. Were there any reasons for not producing it other than as you have previously explained?

A. No other reasons.

Q. Did you become aware of the rerelease of the "Rear Window" motion picture staring Jimmy Stewart in late 1983?

A. Yes, I did.

Q. Did the fact that the motion picture was rereleased at that time have anything to do with HBO's decisions about its "Rear Window" project?

A. No, not with HBO's decisions, no.

* * *

[57] Q. Do you have any understanding as to the success or lack of success at the box office of the motion picture "Rear Window" when it was released?

A. I have no knowledge of that.

Q. At the time that the "Rear Window" project at HBO fizzled, as you put it, were you aware that the motion picture "Rear Window" had been or was about to be released?

A. I don't remember the two things in conjunction with each other. I remember the rerelease of the motion picture and I remember the fizzling of the two projects – of the project at HBO, but those two things are not tied together in my recollection.

Q. As you are sitting here now, do you have an opinion as to whether the rerelease of the motion picture "Rear Window" would help or hinder the project that HBO was contemplating pursuing with "Rear Window"?

A. Let me answer this question in this way: We couldn't get a cast.

[58] In my opinion, there were two significant reasons for our not being able to get a cast. One was that the script wasn't very good. The other was that there was a movie, an old movie, that was brilliant, and no actor or actress wanted to put themselves up in comparison with it.

That's why I think we weren't able to get it done, the cast problem at HBO. Those were the two reasons. The existence of – it was a remake, and it's very hard to cast a remake of a classic film. Very few people will, you know, want to be compared to great performances from a classic Hitchcock film. So it became very difficult.

The rerelease of the picture, in my opinion, didn't have anything to do with an actor's reluctance to take on a part that had been played in a classic film. That film existed whether it was rereleased or not. It's a classic film. That's my opinion.

* * *

Deposition of Mitch Douglas

* * *

[41] So that we can have an understanding of you as a representative or authors, could you give me a representative list of the type of people that you do represent?

A. Well, some of my clients, past and present, are Studs Terkel, Tennessee Williams, Garry Trudeau, Anne

Edwards, Graham Greene on certain [42] properties in the United States, Richard Frede who wrote "The Interns," Richard Yates, well-known novelist Elaine Dundy, biographer Jerome Lawrence and Robert E. Lee, playwright.

Q. You were representing these people in 1982, 1983?

A. Thereabouts.

Bill C. Davis, "Mass Appeal," Ed Grazyk, "Come Back To The Five And Dime, Jimmy Dean, Jimmy Dean."

Q. I take it that you read both of Mr. Gershe's versions of the play?

A. That's correct.

Q. Did you form an opinion as to the quality of the first part that he wrote?

A. Yes.

Q. What was your opinion?

A. I thought it was very good.

Q. The version that's been called the no-frills version, did you form an opinion as to the quality of that play?

A. I thought that was very good too.

* * *

Deposition of Edythe Landau

* * *

[23] Q. At some point was the REAR WINDOW project abandoned by you?

A. Basically it was abandoned by HBO because HBO made the decision not to do any more theater pieces. They felt that they were not well received by their audiences. They did not garner the ratings that the expenditures warranted, and they pretty much decided not to do any more theater pieces.

[24] Q. You were told this by HBO?

A. Yes.

Q. Do you recall who at HBO told you?

A. I believe Bridget Potter. Maybe Michael Fuchs did. Maybe both.

Q. When were you told that HBO had decided to discontinue the REAR WINDOW project and the theater series?

A. I really don't know. I think it was probably sometime after we did MR. HALPERN AND MR. JOHNSON for them.

Q. Were you ever told that HBO's decision not to proceed with REAR WINDOW had anything to do with the rerelease of the Alfred Hitchcock motion picture REAR WINDOW?

A. No.

* * *

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SHELDON ABEND, dba AUTHORS RESEARCH COMPANY, Plaintiff-Appellant, vs. MCA, INC.; UNIVERSAL FILM EXCHANGE, INC.; JAMES STEWART; PATRICIA HITCHCOCK O'CONNELL, AS CO-EXECUTOR OF THE ESTATE OF ALFRED HITCHCOCK; SAMUEL TAYLOR, AS CO-EXECUTOR OF THE ESTATE OF ALFRED HITCHCOCK AND AS CO-TRUSTEE OF THE ASSETS OF THE ESTATE OF ALFRED HITCHCOCK, Defendants-Appellees.	)	Nos. 87-5780; 87-5833; 87-5922 ORDER (Filed April 13, 1989)

Before: PREGERSON AND THOMPSON, Circuit Judges, and PAUL G. ROSENBLATT, District Judge

Judges Pregerson and Rosenblatt voted to deny the petition for rehearing. Judge Pregerson voted to reject the suggestion for rehearing en banc and Judge Rosenblatt recommends such rejection. Judge Thompson voted to grant the petition for rehearing and the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc and no active judge has requested an en banc hearing. Federal Rule 35(b).

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.